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In re Application of :
KAY, David B. :
Application No.: 10/089,105 : DECISION ON
PCT No.: PCT/US96/13570 :
Int. Filing Date: 19 August 1996 : PETITION UNDER
Priority Date: 23 August 1995 :
Attorney Docket No.: ORTHO-A-CIP-PCT.US : 37 CFR 1.181
For: OPEN HELICAL ORGANIC TISSUE ANCHOR :
AND METHOD OF FACILITATING HEALING :

This decision is in response to applicant's "PETITION TO ACCORD FILING DATE FOR EXPRESS MAIL CORRESPONDENCE NOT RECEIVED BY P.T.O. (37 C.F.R. SECTION 1.10(e))" filed 05 December 2001 and applicant's submission filed 23 January 2002, both of which have been treated as a petition under 37 CFR 1.181.

BACKGROUND

On 19 August 1996, applicant filed international application PCT/US96/13570, which claimed a priority date of 23 August 1995. A copy of the international application was communicated to the United States Patent and Trademark Office (USPTO) from the International Bureau on 06 March 1997. A Demand for international preliminary examination in which the United States was elected, was filed on 24 February 1997, prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 23 February 1998.

On 05 December 2001, applicant submitted the "PETITION TO ACCORD FILING DATE FOR EXPRESS MAIL CORRESPONDENCE NOT RECEIVED BY P.T.O. (37 C.F.R. SECTION 1.10(e))". This petition was accompanied by, *inter alia*, a copy of the international application, a copy of a postcard receipt date-stamped 19 January 1998 by the USPTO, a copy of the Customer Copy of Express Mail Mailing Label Number EM469728491US showing a date-in of "21998", a copy of a "PETITION TO REINSTATE", a postcard receipt date-stamped 15 March 2001 by the USPTO, a copy of a "STATUS INQUIRY", and a postcard receipt date-stamped by the USPTO 25 July 2001.

On 23 January 2002, applicant filed a submission which included, *inter alia*, copies of all

of the papers allegedly filed on 19 February 1998, including an executed Declaration and Power of Attorney, an Information Disclosure Statement, a Rule 34 amendment, and a copy of the transmittal letter.

DISCUSSION

The submission filed 05 December 2001 and the submission filed 23 January 2002 are taken together and treated as a petition under 37 CFR 1.181. This petition requests, in effect, that the copies of the papers filed 23 January 2002 which are purportedly copies of the papers filed 19 February 1998 be accepted as having been received in the USPTO on 19 February 1998.

The original papers purportedly filed on 19 February 1998 have not been located.

The submission filed 23 January 2002 states that the copies of the documents accompanying this submission were originally filed on 19 February 1998: an executed declaration and power of attorney; an Information Disclosure Statement; a transmittal letter; a verified statement claiming small entity status; and a Rule 34 amendment. A postcard receipt date-stamped by the USPTO itemizes the above-identified documents and identifies the above-captioned title and PCT international application number. Further, practitioner states that the copies of the documents filed 23 January 2002 are copies of the documents originally filed on 19 February 1998. However, the postcard receipt is date-stamped 19 January 1998 while applicant alleges that the papers were actually filed 19 February 1998.

The postcard receipt date-stamped 19 January 1998 also itemizes an Express Mail Certificate. The copy of the Express Mail Certificate provided by applicants on 23 January 2002 indicates that the above-identified documents were deposited with the USPS via Express Mail on 19 February 1998 using Express Mail Mailing Label No. EM469728491US. A copy of the Customer Copy of Express Mail Mailing Label Number EM469728491US showing a date-in of 19 February 1998 has been provided. In the petition filed 05 December 2001, petitioner states that this copy of the Express Mail mailing label is a true copy. Thus, there is sufficient evidence to establish that the postcard receipt date-stamped 19 January 2001 by the USPTO should have been date-stamped 19 February 1998. Accordingly, applicant has provided sufficient evidence to establish that on 19 February 1998 applicant filed the above-identified documents. Therefore, in view of all of the evidence, the documents received on 23 January 2002 which applicant states are copies of the documents filed 19 February 1998 may properly be accepted as originally received in the USPTO on 19 February 1998.

Also, applicant has provided sufficient evidence to establish that on 15 March 2001 applicant filed the "PETITION TO REINSTATE" and that on 25 July 2001 applicant filed the "STATUS INQUIRY". The proof is in the form of copies of the receipts for the above-identified application which bear a United States Patent and Trademark Office (USPTO) date stamp of 15 March 2001 and 25 July 2001 and which itemize the "PETITION TO REINSTATE" and

"STATUS INQUIRY", respectively, and identify the above-captioned docket number and title. Further, practitioner states that the copies of the documents filed 05 December 2001 are copies of the documents originally filed 15 March 2001 and 25 July 2001. Therefore, in view of the date-stamped receipt and practitioner's statement, the documents received on 05 December 2001 may properly be accepted as originally received in the USPTO on 15 March 2001 and 25 July 2001. Nevertheless, the "PETITION TO REINSTATE" and the "STATUS INQUIRY" are not addressed substantively in this decision since applicant's request concerning acceptance of the papers originally filed on 19 February 1998 has been granted.

DECISION

For the reasons set forth above, the petition under 37 CFR 1.181 is **GRANTED**.

The application papers have been accorded an application number of 10/089,105.

Any further correspondence with respect to this matter should be addressed to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, with the contents of this letter marked to the attention of the Office of PCT Legal Administration.

This application is being forwarded to the National Stage Processing Branch of the Office of PCT Operations to continue national-stage processing of the application, including the accordation of a 35 U.S.C. 371(c) date of **19 February 1998**.



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